TL7410

Report on the Handling of the East Timor Case

1. Introduction

For the purposes of this report, the 'East Timor Case' is taken to mean the trials which took place after the November 12 incident in Santa Cruz, Dili. It covers the court hearings in both Dili and Jakarta, but does not include the Baucau trials or the military trials in Denpasar.

This report confines itself to the trials in the District Court since the appeal process is still continuing with as yet no concrete results. The appeal process in cases of this kind normally takes from 2-3 months, and therefore the outcome should be known towards the end of October.

Out of the 5 defendants tried in Jakarta, 4 have appealed and one whose sentence was much lighter than the others accepted the Court's sentence. The individual who did not appeal is Dominggos Bareto.

A lightening of the sentences was indeed promised by the judiciary to all of the Accused on the condition that they sign a letter acknowledging their wrong-doing and stating their acceptance of East Timor's integration into Indonesia and the integration process.

Of the 8 tried in Dili, all have appealed, although the defendants involved in the Motael Church incident are all experiencing administrative complications with their appeals. They are being prevented from making a statement in Court if they appeal. Because they are still in detention, it is not possible for them to go alone to Court. The LBH team is continuing to work on having their appeals heard.

This report covers all of the factors and problems experienced before and during the hearings.

1.1. The Joint Committee of the Indonesian Legal Aid Institute Foundation-Indonesian Council of Churches and Indonesian Bishops' Conference and the Legal Aid Institute-Indonesian Lawyers' Association Team

Although initially the defendants requested legal aid on the question of their arrest, detention and to assist them through the hearing process, their needs are clearly not limited to these areas. Those involved in the demonstration in Jakarta had their scholarships granted by the East Timor Regional Government cut off and they are in desperate need of replacement funds. In addition, all but four of those detained are students residing outside of Jakarta. At the time of the demonstration in Jakarta, they were totally unprepared in terms of supplies of clothing and other necessities, for a lengthy period of detention, and the police and judiciary have not given them any assistance whatsoever to obtain these things. They have almost no family in Jakarta, all close relatives being in East Timor. Therefore, in addition to legal aid they require provision of the daily necessities, and the task of meeting these needs has inevitably fallen on the shoulders of the Legal Aid Institute.

The same situation exists in Dili.

Whilst not students, some of the Dili defendants are their families' only bread winners, and therefore financial support for these families is required for the period of their detention.

In addition, prison conditions, particularly in regard to the provision of food and a health service, are not good, and help beyond the prison is required. This matter has become the responsibility of the Legal Advisory Team also.

In view of these inescapable problems and needs, the team is obliged to respond if it truly wishes to assist these people as part of efforts to realise their fundamental rights. As a result of organisational regulations, the Legal Aid Institute Foundation which has the role of representing the defendants in court had to seek out partners to serve them to the best of our ability. The Legal Aid Institute Foundation invited the Indonesian Council of Churches and the Indonesian Bishops Conference to deal with issues not related to the litigation,

and formed a joint team with the Indonesian Lawyers' Association to deal with the litigation.

2. The Defendants

2.1 Dili

Following the incident of November 12, 1991, many people were arrested and detained. According to the official explanation of the judiciary, there were 308 arrests, with 276 individuals being released after their cases were investigated. Finally, however, only 8 cases were referred to Court. The detention of the remaining 22 was formally deferred, although these individuals have not yet returned to their homes. They were placed by the military in Commando units outside Dili under the pretext that for the time being they require education.

The eight detained and tried were: 1) Francisco Miranda Branco; 2) Gregorio da Cunha Saldanha; 3) Bonifacio Magno; 4) Filomeno da Silva Fereira; 5) Carlos dos Santos Lemos; 6) Saturnio da Costa Belo; 7) Juvencio de Jesus Martins; 8) Jacinto Das Raimundo Alves. Only 5 of these were defended by the Team in court. Two of them were defended by a local lawyer. Neither of these two appealed against their sentences and asked for clemency from President Suharto. Because his case right up until the sentencing was heard in a court outside Dili, one of the defendants was not able to be contacted or to contact the Team.

In addition, the cases of a further 5 young people involved in the Motael Church incident of 28 October were heard in court. In this incident, a youth taking refuge at the church, was killed as a result of an attack on the church premises, thought to be orchestrated by members of the security apparatus (dubbed and well known as the S.G.I.) making use of a number of young informants.

This incident in the Motael Church can be said to be what ignited the November 12 demonstration. Sebastiao's death has never been investigated. However, the investigation process with regard to the other youth, Alfonso Henriques, thought to be an informant and found lying sprawled near the church, has been much

faster. A number of young people who had been sheltering at the Church were subsequently accused of having murdered Alfonso although there is speculation that Alfonso was actually killed in another place and by other people. Five youth were accused of murdering Alfonso. They are: 1) Bobby Xavier; 2) Jacob da Silva; 3) Bonifacio Barreto; 4) Aleixo da Silva (Cobra); 5) Joao dos Santos (Cobra). Of these five, two were defended by local lawyers, with both of them accepting their sentences and asking for clemency from the President.

2.2 Jakarta

Of the 70 people arrested after the Jakarta demonstration, only 5 were kept in detention. After serving a short time in detention, the prison terms of the remaining defendants were deferred. Not all of the five were defended by a lega. advisor. The individual who declined being represented in court was Dominggos Bareto, and the other four are: 1) Joao Freitas da Camara; 2) Fernando de Araujo; 3) Agapito Cardoso; 4) Virgilio da Silva Guterres.

3. The Process of Arrest and Detention

3.1 Dili

Generally speaking, the procedures involved in the arrests do not fully satisfy the demands of the Criminal Code, as evidenced by the following account given by one of the Dili defendants, Gregorio da Cunha Saldanha:

'During the period that we were hospitalised in the Wirahusada Hospital for treatment of our bullet wounds, we were interrogated for two days by members of the S.G.I. On 18 November, after 6 days in hospital, we were gathered by members of the police force and taken to the regional police office.

During the period of our detention in the regional police office prison, they tool it in turns to interrogate us, day and night.

On a date I don't remember towards the end of November 1991, we were subjected to interrogations from the afternoon until the following morning. At

that time we were very weak because of our injuries, and yet we were beaten and threatened by the Inspector, Mr Martinus Was. We were surrounded by other police, some of whom joined in pulling out our moustaches. We were obliged to give an explanation in accordance with the wishes of the investigators, not according to the true facts.

3.2 Jakarta

The November 12 incident occurred when the people had just finished praying for Sebastiao Gomes who died in an incident now dubbed the Motael Church incident of 28 October 1991. One week after the incident of November 12 in Dili, students from East Timor studying in Bali and Java gathered and demonstrated peacefully and in an orderly fashion. They were protesting the November 12 incident as the latest in a long series of mass murders of their brothers and sisters. Because most of them are of the opinion that the East Timor issue has not been resolved, they demanded the intervention of the UN in putting and end to the mass killings.

In their demonstration, they carried posters and petitions to be submitted to the UN representative's office in Jl Thamrin, and to a number of nearby foreign embassies such as the Australian and Japanese embassies. The messages contained on the posters and in the petitions related to the November 12 incident and to the process of integration considered to be illegal and therefore necessitating the intervention of the UN. Amongst other things, the posters read: 'Mr Alatas! The question is not development but invasion and self-determination'.

In addition, they prepared a petition entitled Declaracao do Movimento Nacional dos Estudantes de Timor Leste na Indonesia (Declaration of the National Movement of East Timor Students in Indonesia), which among other things claims 'Indonesia's invasion of East Timor is a cruel act which can be compared with Iraq's invasion of Kuwait'.

The demonstrators succeeded in submitting the petition to the office of the UN representative, however they were prevented from doing so at the embassies and were subsequently arrested and detained by police from the Metrojaya command.

As a result of this demonstration, there were initially 70 students caught and arrested on 19 November. However, after intensive interrogations lasting a week, 49 had their periods of detention deferred. After being imprisoned for almost 120 days, 18 others were released. After this second group were released, only 4 remained in detention and continued to be interrogated. They were: 1) Joao Freitas da Camara; 2) Virgilio da Silva Guterres; 3) Agapito Cardoso; 4) Dominggos Bareto.

Fernando de Araujo who was moved from Denpasar to Jakarta was detained together with the other 4 accused. Three of Fernando's colleagues were released and allowed to return home, having had their periods of detention deferred. Therefore, the total number remaining in prison and awaiting trial were the 5 individuals named above.

In short, the manner in which the arrests of the above were conducted does not comply with the regulations stipulated in the Criminal Code. For example, in Fernando's case, the arresting officer was not a member of the police force, and neither did he show proof of identity or a letter authorising the arrest. The official also failed to leave a copy of the authorisation letter with the family or those living in the same house, and did not explain to the people concerned what Fernando was being accused of, nor where he would be detained. What actually happened was that Fernando's home was unexpectedly entered by officers who weren't police, looking for incriminating evidence such as grenades or other prohibited items, never giving Fernando a chance to explain anything. He was taken away along with some documents uncovered during the raid. What these documents actually are is unknown since at this stage of investigations no written Record of Investigation Procedures was produced.

Fernando was initially held in Denpasar and was later transferred to Jakarta.

4. Legal Aid and the Defendants' Rights whilst in Detention

At the investigation stage and right up until the time that a written Record of Investigation Procedures was compiled, the defendants were completely denied access to legal aid. By the same token, the Legal Advisors they appointed via their families and friends were also prevented from meeting with them. In addition, their other rights as individuals officially suspected of committing criminal acts were not respected. These rights include the right to receive visits from family and priests and the right to correspond. In the first months of their imprisonment, hardly any family members were allowed to visit, there were no visits whatsoever from priests and many letters written were held in the investigator's office without the prisoners ever being informed of this. Indeed, after the official Record of Investigation Procedures had been completed and when the process was ready to move onto the stage of charges being laid, the Investigator (judiciary) did grant permission for both family visits and consultations with Legal Advisors, although from the point of view of legal aid this is not particularly significant since the investigation process had already been completed in favour of the Investigator's version of events.

After spending a few days in detention, the defendants were given a copy of the letter authorising their arrest. Copies of letters authorising the extension of their detention periods continued to be given. However, an explanation has never been provided and it is certainly legally questionable why they were detained and for such a long time. The reasons for this are that the Criminal Code stipulates that detention does not necessarily have to follow from a criminal charge, although formally the accused may be detained in accordance with the Constitution. The detention of the accused must adhere to both judicial principles and those of necessity, avoiding excesses as far as possible.

In this case, as a result of the detention of the accused persons, they were prevented from carrying out their responsibilities as students and some even lost the chance to continue their education because they failed to carry out the necessary administrative procedures such as re-enrolment. Moreover, it is clear that the period of detention was not necessary for the purposes of

investigation, since investigations took up only a small percentage of the total time spent by the defendants in prison. On the contrary, they mostly bided their time, without being permitted to do anything such as read in their cells. They were allowed no reading material. Worse still is the fact that two of the defendants, namely Fernando and Joao da Camara, were completely prevented from communicating with the other prisoners. They were placed in solitary confinement without any reasons given or the chance to ask why this was so.

In strictly legal terms, these issues could have been the brought up in a pre-trial. However, because they were completely denied access or communication with the world beyond the prison, this process failed to take place. The Legal Advisors who were responsible for obtaining authorisation and the agreement of the defendants to submit the request for a pre-trial investigation, were prevented from doing so, despite the fact that the law permits this. Nevertheless, once a case has begun to be heard in court, it is too late according to legal norms to request a pre-trial.

What Joao da Camara and Fernando experienced is quite tragic. It is well-known that according to the Criminal Code, there is a limit to the period of detention to which the accused in a criminal case are subject during each stage of investigations. During investigations, the accused may be held for a maximum of 60 days. After this period, there is a legal obligation for them to be released. Joao and Fernando were detained during the investigations for almost 120 days. It is clear that such an investigation process represents a serious violation of the legal code. Yet the two defendants lost the opportunity to contest this violation, not through any fault of their own, but as a result of the illegal actions of the investigating officials at that time, that is, the Judiciary. Therefore, they have become the victims of a game which violates legal norms.

Throughout the investigations, the accused were not given the opportunity to call on witnesses to help them in their defence. However, this is a very important right which must be respected if an honest and unbiased trial is to take place, and is explicitly set forth in the Criminal Code.

5. The Use of Violence During Investigations

It must be acknowledged that in Jakarta there was virtually no serious physical pressure put on the accused individuals during the investigation process. This does not, however, imply that the investigations were conducted in accordance with legal principles. The intense pressure put on the defendants by the Investigator to sign a letter expressing their regret and apologies to the Indonesian government was very disturbing. In addition, they were subjected to indirect threats of never having their cases heard in court, never being free to study again and having their scholarships cut off, if they failed to sign. They were told that in such a case, the Subversion charge with a maximum sentence would apply. Many in the end were not sufficiently strong to bear up to this pressure and signed the statement. For these, the results were not long in coming, with some of them now having been released, although the charges against them have not been dropped.

The release of these individuals was not bona fide and indirectly represents a new form of intimidation, since in addition to at every moment having to be prepared to have their cases taken to court, they are also obliged to report weekly to the nearest military or police command.

Dominggos Bareto was particularly unfortunate. Although he signed the letter, he was still taken to court, receiving however a lighter sentence than the other defendants charged with the same offence. He was sentenced to 6 months imprisonment, and since this was precisely the term served at the time of the sentencing, he was allowed to be immediately released, whilst Virgilio was given 2 years 6 months and Agapito Cardoso 10 months.

From the chronology of the investigations outlined above, it can be concluded that in the case of the East Timorese, there was bias and dishonesty in the implementation of legal processes. However, this stage is fundamental for the stages that follow. For example, the formulation of the charges to be laid is based on the Record of Investigations compiled at this stage of the process. Ultimately, the document outlining the charges is of central importance during

both investigations and in the court sessions. In practice, it can be said to be the most important tool for establishing the truth.

6. Prison Term Deferrals

Another important point needs to be made below. The question of an individual being released from prison but not from certain charges is a serious matter, since with such a status, the individual is suspended in limbo. At the same time this situation is a form of intimidation also. Worse still is it if this practice prevents the case from later being solved legally, since there is no time limit set, nor any ruling on this matter in the Criminal Code.

In addition, most of them have already been detained in the past, some for a few days and other for a few weeks. If the case is not referred to court, then there are no strong grounds for a charge against them, or by extension for detaining them. In the case of imprisonment without strong or valid reasons, compensation and rehabilitation must be granted. This question has so far not become the subject of litigation and remains on the list of the Legal Advisory Team's unfinished homework.

7. The Hearings and Sentencing

As mentioned above, 8 people were tried in Dili and 5 in Jakarta. All of them were tried in the district court (of first instance) and some of them appealed against their sentences. The following are the sentences of those tried in Jakarta: 1) Fernando de Araujo, sentenced to 9 years imprisonment; 2) Joao Freitas da Camara, sentenced to 10 years imprisonment; both Joao and Fernando were charged with Subversion; 3) Virgilio da Silva Guterres, sentenced to 2 years, 6 months imprisonment; 4) Agapito Cardoso, sentenced to 10 months imprisonment.

Those tried in Dili are: (1) Francisco Miranda Branco, sentenced to 15 years jail (2) Gregorio da Cunha Saldanha, sentenced to life imprisonment. Both were convicted of the charge of subversion. (3) Jacinto des Neves Raimundo Alves

(24) sentenced to 10 years jail; (4) Filomeno da Silva Fereira (34); Juvencio de Jesus Martins (30); (6) Bobby Xavier (18), sentenced to 4 years jail; (7) Joao dos Santos (23); (8) Aleixo da Silva alias Cobra (22); (9); Jacob da Silva sentenced to 2 years jail; (10) Bonifacio Bareto sentenced to 1 year 8 months jail. Number 6 onwards were accused of involvement in the 28 October 1991 Incident, more often referred to as the Motael Incident.

Two types of charges were laid against them, that is (1) charges relating to Law No. 11/PNPS/1963 concerning the Eradication of Subversive Activities as in the case of Francisco Miranda Branco and (2) charges relating to the Penal Code as in the case of the others.

The articles of the Subversion Law referred to were articles 1(1) 1 b jo article 13 (1) which states that:

It is forbidden to carry out criminally subversive activities; anyone known to be involved in activities with the intention of undermining the power of the state or the authority of the legal government or the state apparatus according to article 13 must be sentenced to death, or sentenced to life imprisonment, or continual imprisonment for a period of 20 years.

The articles of the Penal Code referred to in the Jakarta trials differed to those referred to in the Dili trials. The Jakarta trials referred to articles 154 and 155 of the Penal Code which states that:

Anyone who publicly expresses enmity, hate or offence towards the Indonesian government, faces a jail sentence of a maximum of 7 years or a maximum fine of forty five thousand rupiah (154) and anyone who publicly distributes, displays or posts words or pictures which contain sentiments of enmity, hate or offence toward the Indonesian government, with the intent of making the contents publicly known, will face a maximum jail sentence of four years six months or a maximum fine of four thousand five hundred rupiah (155 (1)).

Whilst the article of the Criminal Code referred to in the Dili trials was article 106 which states that:

Attacks with the intention of allowing a part of the state territory to fall into enemy hands or to separate a part of the state territory, is threatened with life imprisonment or temporary imprisonment for a maximum of 20 years.

In the cases of those accused in connection with the Motael Incident, articles referred to concerned murder and assault.

From the Chief Prosecutor's official explanation, information was obtained concerning the criteria referred to to determine who was to be charged with special criminal activities (subversion) and who was to be charged with general criminal activities (Penal Code), as follows:

1. *Those who deliberately set out to organise, lead and mobilise.*

2. *Those who deliberately set out to and actively undertook illegal activities.*

3. *Those who were aware of the aims and objective of the secessionist remnants in East Timor, whose influence mostly results from misleading information, provocation, or the bombastic promises of their leaders.*

Further, the document that details the charges mentions: the existence of an organisation closed and clandestine in nature and demonstrations in both Jakarta and Dili. It appears that the demonstration is not as important as the existence of the clandestine organisation.

The document detailing the charges for the subversion cases essentially says that they have connections with and even fall under the protection of a clandestine organisation called CNRM (Conselho Nacional Da Resistencia Maubere) under the leadership of Xanana Gusmao. The students who staged a

demonstration in Jakarta on November 19 1991 were members of RENETIL (Resistencia Nacional Das Estudantes de Timor Leste. Those tried in Dili were members of a clandestine organisation called the CE (Comite Executivo).

The banners which were carried by the demonstrators, (both in the demonstration staged by members of the community following the prayer service for Sebastiao Gomes in Motael church and during the procession to the Santa Cruz cemetery to lay flowers, and the demonstration by the students in Jakarta), included the words: in Dili, "Sebastiao is Dead, What About Our Fate?"; "Free our Friends detained on October 28 at Motael Church ". In Jakarta, "Mr Alatas! The question is not development but invasion and self-determination "; "The massacre on 12 November is just a small part of the massacre a long 16 years of our resistance " [sic.].

8. A P P E A L

During the trials several issues arose which failed to receive satisfactory attention. Because of these, the accused and the Defence Team stated their rejection of the decision of the District Court Judge, for both the Dili trials and those in Jakarta. These issues included:

1. *The fact that the suspects had no access to legal aid during questioning fails to fulfill the legal conditions for the compilation of charges.*

2. *The subversion law is inappropriate in an era of the return to the consistent and complete application of the 1945 Constitution.*

3. *Proof of the facts is premature. It even appeared that information obtained outside of the courtroom, whether in a conscious way or not, had a part in influencing the compilation of what were referred to in the trial as proven facts. These facts concerned the existence of the clandestine organisations, their activities and their relation to other organisations and groups, both the Jakarta and*

Dili demonstrations, contacts with foreigners etc.

9. THE IMPACT OF OUR PRESENCE IN TIMOR

Initially it was difficult for the Joint Committee and the Defence Team to gain access to East Timor. It was immediately felt that there was suspicion and an unwillingness to cooperate on the part of the local community. The lack of cooperation which was at first only expected to come from the civil and military bureaucracy, actually came from the Timorese community itself. It appears that their experience shows that there has never before been a group to come to East Timor to hear and defend their legal interests, such that they have come to conclude that legal aid from anyone will bring the same results. Because of that, when the Justice Team, consisting of the civil and military apparatus, appointed Barrister Ponco Atmono as their legal defence, they gave no reaction, meaning that they neither rejected nor consented to his appointment. For them, with a Legal Advisor from Indonesia, moreover one appointed by the local power holders, their defence would have no meaning at all.

Nevertheless, in the end the accused requested, through their families, that the Legal Advice Team act as their Defence. Their willingness to receive the Legal Advice Team was expressed when the Joint Committee Team visited Dili to organise the problem of the East Timorese student's scholarships with the local regional government, in a meeting at the house of a community figure who later often ran into trouble with security forces. It is not clear whether such trouble was related to the meeting or not. As a sign of their willingness, they signed a contract agreeing to be defended in the trials.

The meeting in the house of the community figure represented the first sign of trust from the Timorese community towards the newcomers. The courage and openness displayed in their willingness to meet with the newcomers became increasingly evident as time went on. After a while the families of the accused people were no longer afraid to come to consult with the defence team in the Hotel Turismo although the hotel was always monitored by intelligence agents.

They were aware that consultation with the legal advice team, who were motivated by genuine intentions to uphold the law, was their right which is protected by law. They also became aware of many issues concerning Indonesian law that they weren't previously aware of, including both procedural matters such as rights of family members to visit detainees, as well as the substance of the law concerning issues relating to accusations levelled against the accused.

During consultations, the families displayed how much they missed detained family members, and how grateful they were to the Legal Advice Team. For example, nearly every time they came, someone brought home-made cakes and invited their children along. Such meetings also provided an opportunity for them to indirectly communicate with the detained suspects because the outcome of consultations with the suspects were always conveyed. This situation was of great assistance in cases where efforts were made to obstruct the legal advisors. Thus, although they had never met the team, when they were asked by the Judge, they assertively and explicitly said they only wanted to be legally represented by the LBH-IKADIN team, and rejected the legal defence proposed by the police.

From the time of the arrival of the arrival of the Legal Advice team in Dili there were signs of displeasure from the local apparatus. Consultation with the families of the suspects was not free from disruption. Intelligence officials followed the activities of the team on a continual basis. There were even some people who made attempts to disrupt the consultation process by knocking on the door, as if they wanted to be let in. But when the door was opened there was no-one there. This happened constantly, and seriously disrupted the Team's concentration. The District Commander Brigadier General Theo Sjafei stated in the mass media that it was not the military's actions, but the arrival of the team, which was most disruptive.

In addition, although the Team obtained written authorisation from the family of the suspects and verbal authorisation from the suspects via their families, they were not permitted to meet and consult with the detainees. And at the

same time the detainees were subject to various forms of intimidation to force them to accept Barrister Ponco Atmono. But they continued with great determination to reject this proposal.

They displayed the same attitude when in the trial session the Judge clearly and openly refused the presence of the defence team although we had already been appointed as the Legal Advisor for the trial. Thanks to the perseverance and courage of the defendants, in the end they could no longer obstruct our presence.

Their courage to say exactly what they felt was displayed in their statements throughout the trial. These statements not only related to their activities during the questioning process, while they were in detention, but was more substantial in relation to their opinions on the process of East Timor's integration into Indonesia. This is almost the first time an open and to the point attitude has been adopted towards the issue of integration. It is indeed a very sensitive topic of discussion. They presented their opinions in written form in their defence pleas.

These defence pleas basically stated that the integration issue is not over yet because the East Timorese people's opinion on the matter has never been sought. They agree with whatever the majority of the people choose, whether that to be to integrate or not. This is a basic issue from the perspective of both national and international law. As proof, it was mentioned that the debate on this question continues in UN fora. UN resolutions have even been adopted, a fact which Indonesia is hardly proud of.

In addition to the suspects and their families, other community members also displayed great courage in coming to meet with the Team. These included Ms. Joanita Galucho who came to the Turismo Hotel to meet the Team, to request legal aid for a case in which she is currently involved. She has been accused o offending a government official because she requested in written form protection from the Governor explaining her fears regarding the fate of her husband, who is currently serving a jail sentence and who 'disappeared' at the

hands of officials. Her husband is currently serving a jail sentence for involvement in anti- integration activities, in particular for his participation in a demonstration at the time of the visit of the US Ambassador to Dili, and who as a result of his anxiety about the leaking of information concerning his possible disappearance, requested his wife's assistance.

The Governor, always looked to as a pillar of the community, handed the letter over to a competent and responsible body. This was where Ms. Joanita's troubles began. She was accused of distributing libellous information. The team also took an interest in this case.

Explicit support also came from the Catholic church. The church was extremely grateful for the Team's defence of the accused and hoped that such efforts would continue with the opening of an Legal Aid Institute office in Dili.

10. C O M M U N I T Y E X P E C T A T I O N S

Through the to-the-point and legalistic methods of the Team's defence as well as their efforts to uphold human rights, the people came to see that not every Indonesian is of the same mold they have experienced so far. They witnessed and felt the direct impact of the Team's avid debate when they were clearly obstructed in their efforts to practise litigation in the Dili District Court, as well as of their presentation of the cases of ill-treatment of detainees and obstruction of family members intending to visit their relatives in detention. They were also afforded opportunities to read and hear the Team's defence plea several times, which, as well as receiving a copy, they recorded. They felt the results of legal aid which they have previously had no access to. This was evident in the statements of the family members of the accused and the accused themselves on the closing of the trials.

It can be said that they placed high expectations on the presence of the team, not only in relation to the case in process, but more generally in terms of boosting their self-confidence in resolving their own conflicts. They were very much aware of the political limits relating to their own involvement in such

cases, although they their technical capabilities in defence were sufficient. Past events may be factors which can at any time be used as an instrument to marginalise people. Additionally, this can always be used by the security forces to legitimise extra-judicial actions which are a common occurrence for them. Because of that, they had high hopes that the team would remain among the community on a continuing basis.

What was said by the families of the accused was confirmed by community figures, both politicians, religious figures and informal figures. However on the other hand there was also a explicit rejection by the local government, particularly the military. They will actively attempt to obstruct any efforts by the team to establish themselves in a formal manner in East Timor.

Other problems are technical in nature. Recruiting professional and clerical staff is not an easy task. Not only because East Timor is still widely perceived as unsafe, but also it would require a lot of funding. Further, staff are sure not to gain support from government apparatus, and their room to move will be highly restricted.

Another issue is the institutional presence in East Timor is sure to be subject to international criticism, considering that the Question of Timor is still being debated at the UN. This is why, structurally, the East Timorese Diocese falls directly under the leadership of the Pope and the Vatican, and are not a part of the Indonesian Bishops' Conference. Thus the Dili Diocese (including the Bishop) has continually been a controversial subject. For the security forces they represent a destabilising factor, considering their influential role in the community.

This is indeed a reality, but at the same time the Indonesian government's de facto rule over East Timor is another reality. East Timor has gained the legal status of Indonesia's 27th province according to law no 7/1979 which was finally ratified by the People's Consultative Assembly. So if we act as if this reality didn't exist would greatly undermine the legal interests and protection of the fundamental rights of the East Timorese people. Because violations will

continue to occur if there are no efforts to prevent their occurrence. This is indeed a dilemma.

In this, the strongest position is that which sides with the real community interests, regardless of its political dimensions. In other words, regardless of the various perceptions of the integration process, human rights must be defended. Because the principles of human rights are universal regardless of issues of politics, nationality and religion. The only question that remains is how to find the most efficient and effective form for institutional presence in East Timor, merely from the operational perspective.

The experience of the Indonesian Legal Aid Institute Foundation can be used as a point of reference for the setting up of a legal aid office. The institutional extension is not an automatic pro-forma procedure, but must be adapted to the needs and disposition of the local community who, in the final analysis, will support the new institution. In the initial stages, our presence in East Timor will not take the form of an office, but rather merely personal presence to undertake the basic tasks relating to complaints arising from the local community, and to offer the necessary explanations to allow them to resolve their own problems through the available institutions. But, is supposing the problem is so critical that advocacy is required, other NGOs which are responsible for handling such problems can be contacted. Their experience has shown this method to be very effective.

Nevertheless, the best thing to do to arrive at the final decision would be to convene a workshop which can recommend an appropriate choice which as far as possible involves those sections of the local communities facing problems daily and offering services in East Timor, as well as other sectors of society who have experience in other fields as a comparison. Choices will be alternatively compiled with the possibility of evaluation within a given time period.

11. CONCLUSION

As explained above this report is not yet final because the appeal process is still pending and may reach the level of Supreme Court. The appeal to the Supreme Court will be the final stage because in view of the families' attitude and the perception of the convicted East Timorese activists, the possibility of a Pardon from the President is very small, if not non-existent. According to our estimates, the appeal to the Supreme Court will be completed by the end of 1992. In addition, as the appeal is in process, other cases will be taken to court.

The decision of the Supreme Court will allow for a final and more complete report of the cases to be produced.